



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/579,481	04/27/2007	Martin Bunce	06275-509US1 101087-1P US	1607
26164 7590 01/21/2010 FISH & RICHARDSON P.C. P.O BOX 1022 MINNEAPOLIS, MN 55440-1022			EXAMINER YOUNG, RACHEL T	
			ART UNIT 3771	PAPER NUMBER
			NOTIFICATION DATE 01/21/2010	DELIVERY MODE ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

PATDOCTC@fr.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/579,481	<b>Applicant(s)</b> BUNCE, MARTIN	
	<b>Examiner</b> RACHEL T. YOUNG	<b>Art Unit</b> 3771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 26 October 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 May 2006 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)                        | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Amendment***

1. This office action is responsive to the amendment filed on 10/26/09. As directed by the amendment: claim 1 has been amended, no claims have been canceled, and no new claims have been added. Thus, claims 1-8 are presently pending in the application.

### ***Drawings***

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the lug from claim 8 must be shown or the feature canceled from the claim. No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New

Art Unit: 3771

Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claim 5 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 5, line 3 recites “substantially follows the contours thereof”, however “the contours” is lacking proper antecedent basis. It is also unclear as to how the strap follows the contours and if the applicant is referring to the strap or the body when reciting “thereof”.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over McNary (5,899,200) in view of Dehaven (6,003,205).

Regarding claim 1, in fig. 3 McNary discloses an inhaler for dispensing doses of medicament from a container under user activation (abstract) and the inhaler comprising a body 4 including a mouthpiece (8, Fig. 6) through which the medicament is dispensed and a cap 9 which can be placed in a position to substantially occlude the mouthpiece and the cap is attached to the body by a strap 10 which pivots from the body and the cap must translate away from the mouthpiece prior to the pivoting of the strap. McNary is silent regarding that the cap can slide on the strap. However, in figures 1 and 3 Dehaven teaches a cap 22 that slides on a strap 16. Cap 22 must slide along groove 19 in order to allow the strap 16 to pivot for replacement or removal of the drink 11 being contained. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify McNary's cap and strap with a cap that slides on a strap, as taught by Dehaven, for the purpose of providing a more basic strap that doesn't need to be folded.

Regarding claims 2-3, in fig. 3 and 6 McNary discloses that the mouthpiece 8 projects from the body 4 and that the cap both occludes the mouthpiece and overlies the projection of the mouthpiece.

Regarding claim 4, McNary discloses that the inhaler is a plastic material (Col. 2, ll. 46-49) and the strap and body are formed as a unit (Col. 2, ll. 46-49). McNary is silent regarding that the strap and body are molded, Re claim 4, the claimed phrase "said strap and said body are molded" is being treated as a product-by-process limitation and since it has been held that a product-by-process limitation is not construed as being limited to the product formed by the specific process recited,

Art Unit: 3771

therefore, even though McNary is silent as to the process used to form the strap and body, it appears that the McNary's product would be the same or similar as that claimed, especially since both applicant's product and the prior art product is made of plastic material.

Regarding claims 6-7, McNary discloses that the container is pressurized (abstract line 1), and that the inhaler is a metered dose inhaler (abstract, lines 1-2, Col. 1, ll. 1-12)

Regarding claim 8, the modified McNary discloses that the cap is attached to the strap by means of a lug (Dehaven, 25, fig. 2-4).

7. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over McNary/Dehaven as applied to claim 1 above, and further in view of Pollet et al. (2004/0089292).

Regarding claim 5, the modified McNary discloses a strap and body, but is silent regarding that the strap underlies the body and substantially follows the contours thereof. However, in fig. 5b Pollet teaches a strap that underlies the body and substantially follows the contours thereof.

### ***Response to Arguments***

8. Applicant's arguments with respect to claims 1-8 have been considered but are moot in view of the new grounds of rejection.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Kelley et al. (5,564,583) to a portable carrier for a beverage container, Mizusawa (4,776,486) to a device for holding automobile fuel-tank port cap, and Lawrence (6,648,158) to a self-closing cap for a bottle. Any inquiry concerning this communication or earlier communications from the examiner should be directed to RACHEL T. YOUNG whose telephone number is (571)270-1481. The examiner can normally be reached on mon-thurs 7 am - 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on 571-272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/RACHEL T YOUNG/  
Examiner, Art Unit 3771

/Justine R Yu/  
Supervisory Patent Examiner, Art Unit 3771